DDI-4462-75

30 May 1975

MEMORANDUM FOR: Chief, DDI Executive Staff

SUBJECT : Security Classification Act of 1975

REFERENCE : Your Memo, dated 21 May 1975, same Subject

1. OGCR's summary response to your questions about this bill:

. . . The provisions for assigning and exercising classifying authority are not sensible; they certainly are too burdensome.

. . . The stated criteria for the classification of information do not suffice to protect DDI information.

. . . The automatic downgrading and declassification procedure, with its limited authorization of exemptions, ignores the protection needs of DDI-type information; the potential administrative burden is enormous.

2. Some more detailed comments:

a. The authors of the bill demonstrate little knowledge of the nature of intelligence and its role in the Government. Their aim is to reduce the volume of Government secrets. This is laudable, but there is no equal concern with the adequacy of the protection of material that should remain classified.

b. I see nothing in the bill that even permits the classification of positive intelligence -- i.e., research reports, judgments, and analyses. The same goes for national estimates, USIB Minutes, intelligence annexes to war plans, and maps and charts, and so on.

c. A major problem arises from the bill's peculiar approach to defining the criteria for "classification markings." The authors abandon existing philosophy, which classifies information on the basis of the degree of damage its compromise might cause to the United States. Instead, they attempt to itemize everything classifiable with rigid rules on the proper category of each.

Such a laundry-list approach to classification can only be described as ignorant. One can never list everything (as the bill spectacularly demonstrates), and information that may be Unclassified today -- a piece of hardware, a fact, a current negotiation, or what -- may be Top Secret tomorrow.

d. Oddities abound in the laundry list: one may mark Top Secret a negotiation with Liechtenstein over the construction of a new consulate but one may only mark Confidential a document relating to United States strategy "the disclosure of which would seriously damage our current diplomatic relations;" we may mark information Secret if it contains specific details of a weapon systems currently deployed but we may only mark it Confidential if it isn't currently deployed, and by inference we may not classify it at all if it has in any way been compromised.

e. There is no understanding the criteria for downgrading and declassifying. As I read it, the bill provides for exemption from automatic downgrading or declassifying only in the case of Top Secret information. The Intelligence Community cannot function under such a rule. No one disagrees that tighter classification controls and periodic reviews are needed, and in fact some progress toward this end has been made. But the proposed solution is much worse than the problem.

f. The bill's claim that it will replace the previous "inadequate and inefficient" system by "a workable efficient and enforceable" system is nonsense. The drafters can have no idea of the administrative chaos the bill would thrust upon the Government. Given the number of classified documents produced each day in the Intelligence Community, the CIA's own administrative and clerical task connected with classification downgrading, declassification, and recordkeeping would amount to many thousands of actions each month. The prospect for new paper generation is mind-boggling. In view of the provisions of the 1974 Amendment to the FOIA, which requires agencies to revalidate security classifications on demand, a lot of this aspect of the bill seems unnecessary. The horrendous task of review, declassification, and notification required for all information classified in the past would seem equally pointless.

g. Lastly, there is obscure or questionable language throughout the bill. Examples: subordinate supervisory officials below the level of "Section Chief or its equivalent" may not classify documents (p. 8); "tactical" operational plan of a "limited scale" (p. 14); a "tactical" military operation "legally authorized"

by the United States against another country (pp. 15-16); the Supreme Court "shall act promptly" in considering such appeal (p. 40). (I wasn't aware the Legislative Branch told the Judicial Branch how to conduct its business.)

3. OLC has a lot of work to do.

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